

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

DOLGENCORP, LLC	)	
	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	
NATIONAL LABOR RELATIONS BOARD,	)	
	)	
Respondent.	)	
	)	

**PETITION FOR REVIEW**

Dolgencorp, LLC hereby petitions the Court for review of the Decision and Order of the National Labor Relations Board (“NLRB”) entered on December 11, 2018 in NLRB Case No. 14-CA-223328. A copy of this Decision and Order, reported at 367 NLRB No. 48, is attached.

This Court has jurisdiction because the Board’s decision is a final order within the meaning of 29 U.S.C. § 160(f) of the National Labor Relations Act, and the Petitioner is an aggrieved party. Venue properly lies in this Court under 29 U.S.C. § 160(f) because the underlying representation case and the unfair labor practice was alleged to have taken place within the geographical boundaries of this circuit.

Respectfully submitted,

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December 17, 2018

*Attorneys for Petitioner, Dolgencorp, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on December 17, 2018 a true and correct copy of the foregoing  
Petition for Review, with attachments, was served by Federal Express on the following:

Linda J. Dreeben, Esq.  
Deputy Associate General Counsel  
Appellate and Supreme Court Litigation Branch  
National Labor Relations Board  
1015 Half Street  
Washington, DC 20570

Leonard Perez  
Regional Director, Region 14  
National Labor Relations Board  
1222 Spruce Street  
St. Louis, MO 63103

this December 17, 2018

\_\_\_\_\_  
/s/Crystal S. Carey  
Crystal S. Carey

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

**Dolgencorp, LLC. and United Food and Commercial Workers, Local 655.** Case 14–CA–223328

December 11, 2018

**DECISION AND ORDER**

BY MEMBERS MCFERRAN, KAPLAN, AND EMANUEL

This is a refusal-to-bargain case in which the Respondent is contesting the Union’s certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on July 6, 2018, by United Food and Commercial Workers, Local 655 (the Union), the General Counsel issued the complaint on July 20, 2018, alleging that Dolgencorp, LLC (the Respondent) has violated Section 8(a)(5) and (1) of the Act by refusing the Union’s request to recognize and bargain with it following the Union’s certification in Case 14–RC–209845. (Official notice is taken of the record in the representation proceeding as defined in the Board’s Rules and Regulations, Secs. 102.68 and 102.69(d). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On August 7, 2018, the General Counsel filed a Motion for Summary Judgment. On August 9, 2018, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.<sup>1</sup>

**Ruling on Motion for Summary Judgment**

The Respondent admits its refusal to bargain, but contests the validity of the Union’s certification of representative on the basis of its contentions, raised and rejected in the underlying representation proceeding, that the certification was improper because the Union’s unlawful conduct tainted and invalidated the election results.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We

<sup>1</sup> Chairman Ring is recused and took no part in the consideration of this case.

therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent has been a Kentucky limited liability company with a facility located in Auxvasse, Missouri, and has been engaged in the retail sale of food, snacks, health and beauty aids, cleaning supplies, family apparel, housewares, and seasonal items.<sup>2</sup>

In conducting its operations during the 12-month period ending June 30, 2018, the Respondent purchased and received at its Auxvasse, Missouri facility goods valued in excess of \$50,000 directly from points outside the state of Missouri and derived gross revenues in excess of \$500,000.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

**A. The Certification**

Following the representation election held on December 8, 2017, the Union was certified<sup>3</sup> on March 23, 2018, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time Lead Sales Associates and Sales Associates employed by the Employer at its 525 East Harrison Street, Auxvasse, MO 65231 facility, EXCLUDING office clerical employees, managers, supervisors, temporary employees, confidential employees and professional employees as defined in the Act.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

<sup>2</sup> In its answer, the Respondent denies the allegation that at all material times it has been a Kentucky corporation, asserting instead that it is a Kentucky limited liability company. Because the General Counsel’s motion for summary judgment states that the Respondent is a limited liability company, we find that the Respondent’s denials do not raise any issues of fact warranting a hearing.

<sup>3</sup> By unpublished order dated June 21, 2018, the Board denied the Respondent’s request for review.

### B. Refusal to Bargain

By email dated June 27, 2018, the Union requested that the Respondent bargain collectively with it as the exclusive collective-bargaining representative of the unit employees. By email dated July 5, 2018, the Respondent refused to do so. Since June 27, 2018, the Respondent has failed and refused to bargain with the Union.

We find that the Respondent's conduct constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

### CONCLUSION OF LAW

By failing and refusing since June 27, 2018, to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964).

### ORDER

The National Labor Relations Board orders that the Respondent, Dolgencorp, LLC, Auxvasse, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with United Food and Commercial Workers, Local 655, as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time Lead Sales Associates and Sales Associates employed by the Employer at its 525 East Harrison Street, Auxvasse, MO 65231 facility, EXCLUDING office clerical employees, managers, supervisors, temporary employees, confidential employees and professional employees as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Auxvasse, Missouri, copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 27, 2018.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 14 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 11, 2018

Lauren McFerran,

Member

<sup>4</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

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Marvin E. Kaplan, Member

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William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with the United Food and Commercial Workers, Local 655 (the Union) as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following appropriate bargaining unit:

All full-time and regular part-time Lead Sales Associates and Sales Associates employed by us at our 525 East Harrison Street, Auxvasse, MO 65231 facility, EXCLUDING office clerical employees, managers, supervisors, temporary employees, confidential employees and professional employees as defined in the Act.

DOLGENCORP, LLC

The Board's decision can be found at [www.nlrb.gov/case/14-CA-223328](http://www.nlrb.gov/case/14-CA-223328) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

